

STATE OF MICHIGAN
COURT OF APPEALS

HOUGHTON HOLLOW ESTATES, LLC,

Plaintiff-Appellant,

v

PAUL D. BENSON, SHERYLE R. BENSON, and
OKEMOS BUILDINGS, INC.,

Defendants-Appellees.

UNPUBLISHED

May 24, 2005

No. 253511

Ingham Circuit Court

LC No. 02-000201-CK

Before: Cooper, P.J., and Jansen and Hoekstra, JJ.

MEMORANDUM.

In this suit arising from a breakdown in the relationship among the members of plaintiff Houghton Hollow Estates, L.L.C., plaintiff appeals by leave granted from the trial court's order granting defendants' motion to allow partial distribution of certain proceeds being held in trust pending resolution of the suit. We reverse and remand.

We review the trial court's decision to grant defendants' motion and distribute a portion of the trust proceeds for an abuse of discretion. See, e.g., *Kimball v Bangs*, 321 Mich 394, 414; 32 NW2d 831 (1948). Upon such review, we find that the trial court abused its discretion in granting defendants' motion for partial distribution of the trust proceeds.

The proceeds of the trust, which derive from revenue generated by the plaintiff company, are an asset of the company and, as such, are only available for distribution to the members in accordance with the operating agreement. Thus, in permitting partial distribution of the proceeds absent a determination that defendants, as members of the company, are entitled to the proceeds under the terms of the operating agreement, the trial court abused its discretion. This is especially true given that the instant suit stems from a dispute over the proper distribution of the company's revenue among the members, in particular whether defendants are entitled to any proceeds whatsoever because of their failure to comply with the requirements of the operating agreement. Under such circumstances, the award to defendants of a portion of the trust proceeds frustrates the purpose of the litigation and constitutes an abuse of the trial court's discretion.

Accordingly, we reverse and remand for further proceedings consistent with this opinion.
We do not retain jurisdiction.

/s/ Jessica R. Cooper

/s/ Kathleen Jansen

/s/ Joel P. Hoekstra